

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JULIAN O. M.,

Plaintiff,

V.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

CASE NO. 3:19-CV-5412 - DWC

ORDER REVERSING AND REMANDING DEFENDANT'S DECISION TO DENY BENEFITS

Plaintiff filed this action, pursuant to 42 U.S.C. § 405(g), for judicial review of Defendant’s denial of Plaintiff’s application for disability and disability insurance benefits (“DIB”). Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Rule MJR 13, the parties have consented to have this matter heard by the undersigned Magistrate Judge. *See* Dkt. 2.

After considering the record, the Court concludes the Administrative Law Judge (“ALJ”) erred when he improperly discounted Dr. Samuel Coor’s opinion. The ALJ’s error is therefore harmful, and this matter is reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g) to the Commissioner of the Social Security Administration (“Commissioner”) for further proceedings consistent with this Order.

FACTUAL AND PROCEDURAL HISTORY

On March 31, 2016, Plaintiff filed an application for DIB, alleging disability as of March 4, 2012, with an amended onset date of September 1, 2014. *See* Dkt. 8, Administrative Record (“AR”) 23. The application was denied upon initial administrative review and on reconsideration. *See* AR 23. A hearing was held before ALJ Allen G. Erickson on June 27, 2017. *See* AR 42-108. In a decision dated December 15, 2017, the ALJ determined Plaintiff to be not disabled. *See* AR 37. Plaintiff’s request for review of the ALJ’s decision was denied by the Appeals Council, making the ALJ’s decision the final decision of the Commissioner. *See* AR 22; 20 C.F.R. § 404.981, § 416.1481.

In the Opening Brief, Plaintiff maintains the ALJ erred by improperly: (1) evaluating the medical evidence; (2) considering the Veterans Affairs (“VA”) Rating Decision (“VA Rating”); (3) evaluating Plaintiff’s subjective symptom testimony; and (4) determining Plaintiff’s RFC. Dkt. 13.

STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social security benefits if the ALJ's findings are based on legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

DISCUSSION

I. Whether the ALJ properly considered the medical evidence.

Plaintiff contends the ALJ erred by improperly weighing the opinions of Drs. Coor and Alexander Patterson. Dkt. 13, pp. 2-4.

1 In assessing an acceptable medical source, an ALJ must provide “clear and convincing”
2 reasons for rejecting the uncontradicted opinion of either a treating or examining physician.
3 *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995) (citing *Pitzer v. Sullivan*, 908 F.2d 502, 506
4 (9th Cir. 1990)); *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988). When a treating or
5 examining physician’s opinion is contradicted, the opinion can be rejected “for specific and
6 legitimate reasons that are supported by substantial evidence in the record.” *Lester*, 81 F.3d at
7 830-831 (citing *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995)); *Murray v. Heckler*,
8 722 F.2d 499, 502 (9th Cir. 1983). The ALJ can accomplish this by “setting out a detailed and
9 thorough summary of the facts and conflicting clinical evidence, stating his interpretation
10 thereof, and making findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing
11 *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)).

12 A. Dr. Coor

13 In July 2016, Dr. Coor examined Plaintiff and opined he could sit for an hour at a time
14 and stand/walk for thirty minutes at a time. AR 1400. Dr. Coor opined Plaintiff could rarely
15 stoop or kneel and could never crawl. AR 1400.

16 The ALJ rejected the portions of Dr. Coor’s opinion that Plaintiff could sit for an hour
17 at a time, must limit his standing/walking to thirty minutes at a time, and had postural
18 limitations:

19 I have considered this assessment but find it both too restrictive and not restrictive
20 enough. The claimant’s physical limitations are best limited to the sedentary
21 exertional level. The claimant told Dr. Coor that he spent the majority of his day
22 watching television and sitting around. (1) I find insufficient evidence in the
23 record or Dr. Coor’s exam to limit the claimant’s sitting capacity to an hour at a
time. I also agree that given the claimant’s neck, back, and left ankle impairments,
he cannot stand/walk for more than 2 hours total per day, but I find insufficient
evidence that he must limit his standing/walking to 30 minutes at one time. I
therefore reject those portions of Dr. Coor’s assessment.

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2 (2) I give very little weight to the doctor's assessment of the claimant's postural
3 capacity, however, given his largely benign exam findings throughout the record
and on Dr. Coor's exam.

4 AR 35 (citations omitted) (numbering added).

5 The ALJ first dismissed these portions of Dr. Coor's opinion because of insufficient
6 supporting evidence in the record. AR 35. In doing so, the ALJ did not provide any reasoning
7 in support of his conclusion. *See generally* AR 35. The ALJ agreed that Plaintiff has neck,
8 back, and left ankle impairments which limit his standing/walking to two hours total per day
9 yet does not explain how these impairments provide insufficient support to Dr. Coor's opinion
10 regarding Plaintiff's sitting/standing/walking capacity. Instead, the ALJ has simply provided
11 his own interpretation of the medical data from the July 2016 consultation. *See Nguyen v.*
12 *Chater*, 172 F.3d 31, 35 (9th Cir. 1999) ("As a lay person, however, the ALJ was simply not
13 qualified to interpret raw medical data in functional terms..."); *see also Schmidt v. Sullivan*,
14 914 F.2d 117, 118 (7th Cir. 1990) ("judges, including administrative law judges of the Social
15 Security Administration, must be careful not to succumb to the temptation to play doctor. The
16 medical expertise of the Social Security Administration is reflected in regulations; it is not the
17 birthright of the lawyers who apply them. Common sense can mislead; lay intuitions about
18 medical phenomena are often wrong") (internal citations omitted). Without more analysis, the
19 Court is unable to determine whether the ALJ's reason is supported by substantial evidence.
20 *See Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103 (9th Cir. 2014) (citation
21 omitted) ("the ALJ must provide some reasoning in order for us to meaningfully determine
22 whether the ALJ's conclusions were supported by substantial evidence"). Accordingly, the
23 ALJ's first reason to discount the portions of Dr. Coor's opinion that Plaintiff could sit for an
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1 hour at a time and must limit his standing/walking to thirty minutes at a time is not specific and
2 legitimate and supported by the record.

3 Second, the ALJ discounted the portion of Dr. Coor's opinion regarding Plaintiff's
4 postural capacity "given [Plaintiff's] largely benign exam findings throughout the record and
5 on Dr. Coors exam." AR 35. The ALJ did not specify which exams he meant, nor did he
6 mention any part of Dr. Coor's exam that is inconsistent with this portion of Dr. Coor's
7 opinion. Without more, this is conclusory. *Treichler*, 775 F.3d at 1103. Thus, the ALJ's second
8 reason for discounting this portion of Dr. Coor's opinion is not specific and legitimate and
9 supported by substantial evidence.

10 Next, the ALJ discussed the portion of Dr. Coor's opinion regarding Plaintiff's ability
11 to stoop, kneel, and crawl and dismissed it, saying:

12 (1) The doctor himself noted that the claimant's knee complaints had no clear
13 etiology. The claimant did not seek treatment for a knee impairment, and none is
14 established by objective or clinical findings. (2) Furthermore, I do not find that
the claimant's neck or back impairments restrict these postural activities beyond
the occasional basis.

15 AR 35 (numbering added) (citations omitted).

16 First, the ALJ discounted this portion of Dr. Coor's opinion because it is not supported
17 by objective medical evidence in the record. AR 35. In his evaluation of Plaintiff, Dr. Coor
18 interviewed Plaintiff, reviewed his health history, conducted a physical examination, observed
19 his coordination and gait, and tested Plaintiff's muscle strength. AR 1396-1400. Although Dr.
20 Coor did not identify any past problems with Plaintiff's knee, he did note pain in his knee and
21 opined Plaintiff should rarely stoop or knee and should never crawl. *See* AR 1396, 1400. The
22 ALJ merely noted that Plaintiff did not seek treatment for a knee impairment and that
23 Plaintiff's knee impairment is not established by objective or clinical findings and provided
24 no

1 further analysis or reasoning in support. *See* AR 35. An ALJ is required “to build an accurate
2 and logical bridge from the evidence to [his] conclusions so that we may afford the claimant
3 meaningful review of the SSA’s ultimate findings.” *Blakes v. Barnhart*, 331 F.3d 565, 569 (7th
4 Cir. 2003). Here, the ALJ again failed to provide any reasoning in support of his conclusion.
5 Without more information, the Court is unable to determine whether the ALJ’s reason is
6 supported by substantial evidence. *See Treichler*, 775 F.3d at 1103. Thus, the ALJ’s first
7 reason for dismissing the portion of Dr. Coor’s opinion regarding Plaintiff’s ability to stoop,
8 kneel, and crawl is not specific and legitimate and supported by substantial evidence.

9 Second, the ALJ discounted the portion Dr. Coor’s opinion that the claimant’s neck or
10 back impairments restrict these postural activities beyond the occasional basis. But the ALJ
11 provided no basis for his conclusion. Without providing more, the ALJ’s reasoning is
12 conclusory. *See Hess v. Colvin*, No. 14-8103, 2016 WL 1170875, at *3 (C.D. Cal. Mar. 24,
13 2016) (an ALJ merely offers her conclusion when her statement “stands alone, without any
14 supporting facts...”). Thus, the ALJ’s second reason for discounting this portion of Dr. Coor’s
15 opinion is not specific and legitimate and supported by substantial evidence.

16 For the above stated reasons, the Court concludes the ALJ failed to provide specific,
17 legitimate reasons supported by substantial evidence for dismissing Dr. Coor’s opinion.
18 Accordingly, the ALJ erred.

19 “[H]armless error principles apply in the Social Security context.” *Molina v. Astrue*,
20 674 F.3d 1104, 1115 (9th Cir. 2012). An error is harmless, however, only if it is not prejudicial
21 to the claimant or “inconsequential” to the ALJ’s “ultimate nondisability determination.” *Stout*
22 *v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006); *see Molina*, 674 F.3d at
23 1115. The determination as to whether an error is harmless requires a “case-specific
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1 application of judgment" by the reviewing court, based on an examination of the record made
2 "without regard to errors' that do not affect the parties' 'substantial rights.'" *Molina*, 674 F.3d
3 at 1118-1119 (quoting *Shinseki v. Sanders*, 556 U.S. 396, 407 (2009)).

4 Had the ALJ given great weight to Dr. Coor's opinion, the ALJ may have included
5 additional limitations in the RFC. For example, Dr. Coor opined Plaintiff could rarely stoop or
6 kneel and could never crawl. AR 1400. In contrast, in the RFC, the ALJ limited Plaintiff to
7 occasional stooping, kneeling, and crawling. *See* AR 28. Therefore, if Dr. Coor's opinion was
8 given great weight and additional limitations were included in the RFC and in the hypothetical
9 questions posed to the vocational expert ("VE"), the ultimate disability determination may
10 have changed. Accordingly, the ALJ's errors are not harmless and require reversal.

11 B. Dr. Peterson

12 Dr. Peterson performed a psychological consultative examination for the Plaintiff on
13 August 8, 2016. AR 1403-1407. Dr. Peterson opined Plaintiff's "functional limitations are
14 primarily due to his physical health, not due to psychological factors" and "if [his] health
15 problems were to improve, his anxiety and mood symptoms would likely improve." AR 1406.
16 Dr. Peterson did not identify any vocational restrictions attributable to Plaintiff's mental health
17 impairments. *See* AR 1406-1407. The ALJ largely agreed with Dr. Peterson's opinion, and also
18 concluded Plaintiff should be further restricted to understanding, remembering, and applying
19 detailed, but not complex instructions. AR 36. Plaintiff asserts the ALJ erred by failing to
20 acknowledge Dr. Patterson's findings that Plaintiff: had an anxious mood, with a congruent
21 effect; had difficulty with recent memory; and had mild problems with concentration during
22 the evaluation. Dkt. 15, p. 4. Plaintiff further asserts the ALJ failed to provide any explanation
23 for why he did not account for these findings in the RFC. Dkt. 15, pp. 4-5.

1 Dr. Peterson noted Plaintiff had anxiety and mild concentration and memory deficits.

2 *See AR 1406.* But, after conducting the evaluation of Plaintiff which included a mental status
3 examination, Dr. Peterson did not identify any vocational restrictions attributable to his mental
4 health impairments. AR 1406. Plaintiff interprets Dr. Peterson's medical record in a way that
5 would require including functional limitations in the RFC. Thus, Dr. Peterson's opinion is
6 susceptible to more than one rational interpretation. "Where evidence is susceptible to more
7 than one rational interpretation, it is the ALJ's conclusion that must be upheld." *Burch v.*
8 *Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). Additionally, an ALJ "need not discuss all
9 evidence presented." *Vincent ex rel. Vincent v. Heckler*, 739 F.3d 1393, 1394-95 (9th Cir.
10 1984). Accordingly, because the opinion is susceptible to more than one rational interpretation,
11 the ALJ's conclusion must be upheld. Further, although the ALJ did not discuss Dr. Peterson's
12 opinion in its entirety, he was not required to do so. Thus, because Plaintiff alleges no other
13 error, and because the ALJ's reasoning was specific and legitimate and supported by
14 substantial evidence, the Court upholds his treatment of Dr. Peterson's opinion.

15 C. Other medical evidence

16 Plaintiff cites an exhaustive list of medical opinions in the record and asserts that
17 because these opinions constitute significant probative evidence, the ALJ erred by failing to
18 properly evaluate "all of the medical evidence." Dkt. 13, pp. 7-8. Plaintiff says this evidence,
19 considered in its entirety, is consistent with Plaintiff's own testimony. Dkt. 13, p. 7. Given the
20 lack of specificity in Plaintiff's argument, Plaintiff has failed to demonstrate any harmful error
21 on the other medical evidence. *See Bailey v. Colvin*, 669 Fed. Appx. 839, 840 (9th Cir. 2016)
22 (citing *Ludwig v. Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012)) (finding no error where the
23 claimant did not "demonstrate prejudice from any errors"). By failing to explain how the ALJ
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1 erred with regard to each particular opinion, Plaintiff failed to show how the ALJ's alleged
2 mistreatment of this evidence was consequential to the RFC and the ultimate disability
3 determination. The Court therefore rejects Plaintiff's conclusory argument. *See Valentine v.*
4 *Comm'r of Soc. Sec. Admin.*, 574 F.3d 685, 692, n. 2 (9th Cir. 2009) (rejecting "any invitation"
5 to find error where the claimant failed to explain how the ALJ harmfully erred); *see also*
6 *Carmickle*, 533 F.3d 1155 at 1161 (citation and internal quotation omitted) (the court
7 "ordinarily will not consider matters on appeal that are not specifically and distinctly argued in
8 an appellant's opening brief").

9 **II. Whether the ALJ properly considered the VA Rating.**

10 A determination by the VA about whether a claimant is disabled is not binding on the
11 SSA; however, an ALJ must consider the VA's determination in reaching his decision.
12 *McCartey v. Massanari*, 298 F.3d 1072, 1076 (9th Cir. 2002); 20 C.F.R. § 404.1504. Further,
13 the ALJ "must ordinarily give great weight to a VA determination of disability." *McCartey*,
14 298 F.3d at 1076. This is because of "the marked similarity" between the two federal disability
15 programs. *See id.* (describing similarities in the programs). However, "[b]ecause the VA and
16 SSA criteria for determining disability are not identical," the ALJ "may give less weight to a
17 VA disability rating if he gives persuasive, specific, valid reasons for doing so that are
18 supported by the record." *Id.* (citing *Chambliss v. Massanari*, 269 F.3d 520, 522 (5th Cir.
19 2001)).

20 Here, the VA rated Plaintiff as 100% disabled, based on several conditions, including
21 lower extremity radiculopathy, cervical spine intervertebral disc syndrome, gastroesophageal
22 reflux diseases ("GERD"), shoulder osteoarthritis, tinnitus, and adjustment disorder with
23 anxiety. AR 381-383. Plaintiff asserts that the ALJ failed to acknowledge that Plaintiff was
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1 found to be 100% disabled by the VA, and that this failure “tainted his entire evaluation of this
2 evidence.” Dkt. 13, p. 5. But the ALJ provided specific and valid reasons which are supported
3 by the record for discounting the VA’s rating when he determined the vast majority of
4 impairments the VA considered in its disability rating were either not medically determinable
5 or were effectively controlled with medication. *See* 20 C.F.R. § 404.1520(a)(4)(ii) (an
6 “impairment” must be “medically determinable” to be “severe”); *see also Rebensdorf v.*
7 *Berryhill*, 773 F. Appx 874, 877 (9th Cir. 2019) (it is appropriate for an ALJ to assign little
8 weight to a VA rating if the claimant’s symptoms are controlled with medication). For
9 example, the ALJ lists tinnitus as an example of an impairment that was not medically
10 determinable and cites to two places in the record which indicate Plaintiff had no fluid in his
11 ears and had bilaterally normal external auditory canals. AR 875, 1170. The ALJ also noted
12 Plaintiff’s GERD was treated successfully with medication and cited to the record in support.
13 *See* AR 708, 1464. Accordingly, the ALJ has provided persuasive, specific, and valid reasons
14 supported by the record for discounting the VA rating.

15 While the ALJ provided other reasons to discount the VA rating, the Court declines to
16 consider whether these remaining reasons contained error, as any error would be harmless
17 because the ALJ gave a persuasive, specific, and valid reason to discount the rating. *See* AR
18 33-34; *Presley-Carrillo v. Berryhill*, 692 F. Appx. 941, 944-45 (9th Cir. 2017) (citing
19 *Carmickle*, 533 F.3d at 1162) (noting that although an ALJ erred with regard to one reason he
20 gave to discount a medical source, “this error was harmless because the ALJ gave a reason
21 supported by the record” to discount the source). Accordingly, the Court finds the ALJ
22 properly discounted the VA rating.

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1 **III. Whether the ALJ properly evaluated Plaintiff's testimony.**

2 Plaintiff contends the ALJ failed to give clear and convincing reasons for rejecting
3 Plaintiff's testimony about his symptoms and limitations. Dkt. 13, pp. 8-13. The Court
4 concludes the ALJ committed harmful error in assessing Dr. Coor's opinion and must re-
5 evaluate it on remand. *See Section I, supra.* Because Plaintiff will be able to present new
6 evidence and new testimony on remand and because the ALJ's reconsideration of the medical
7 evidence may impact his assessment of Plaintiff's subjective testimony, the ALJ must
8 reconsider Plaintiff's testimony on remand.

9 **IV. Whether the ALJ properly determined Plaintiff's RFC.**

10 Plaintiff asserts the ALJ erred in assessing his RFC and finding him not disabled at Step
11 5 of the sequential evaluation process because the RFC and hypothetical questions to the VE
12 did not contain all Plaintiff's functional limitations. Dkt. 13, pp. 13-14. The Court concludes
13 the ALJ committed harmful error when he failed to properly consider Dr. Coor's opinion and is
14 directed to re-evaluate it on remand. *See Section I, supra.* The ALJ must therefore reassess the
15 RFC on remand. *See Social Security Ruling 96-8p* ("The RFC assessment must always
16 consider and address medical source opinions."); *Valentine*, 574 F.3d at 690 ("an RFC that
17 fails to take into account a claimant's limitations is defective"). As the ALJ must reassess
18 Plaintiff's RFC on remand, he must also re-evaluate the findings at Step 5 to determine if there
19 are jobs existing in significant numbers in the national economy Plaintiff can perform in light
20 of the RFC. *See Watson v. Astrue*, 2010 WL 4269545, *5 (C.D. Cal. Oct. 22, 2010) (finding
21 the ALJ's RFC determination and hypothetical questions posed to the VE defective when the
22 ALJ did not properly consider a doctor's findings).

CONCLUSION

2 Based on the foregoing reasons, the Court hereby finds the ALJ improperly concluded
3 Plaintiff was not disabled. Accordingly, Defendant's decision to deny benefits is reversed and
4 this matter is remanded for further administrative proceedings in accordance with the findings
5 contained herein.

6 Dated this 23rd day of March, 2020.

John Christel

David W. Christel
United States Magistrate Judge